

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

Editor's Note: The following Notice of Final Rulemaking was exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 4188.)

[R13-215]

PREAMBLE

- 1. Articles, Parts, and Sections Affected (as applicable)**

R4-23-611	<u>Rulemaking Action</u>
R4-23-612	Amend
	Amend
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 32-1904(A)(1)
Implementing statute: A.R.S. § 32-1904(A)(2) and (B)(3)
- 3. The effective date of the rule:**

February 1, 2014
- 4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 18 A.A.R. 1790, July 27, 2012
Notice of Proposed Rulemaking: 19 A.A.R. 1528, June 14, 2013
- 5. The agency's contact person who can answer questions about the rulemaking:**

Name:	Dean Wright, Compliance Officer
Address:	Board of Pharmacy 1616 W. Adams Phoenix, AZ 85007
Telephone:	(602) 771-2727
Fax:	(602) 771-2749
E-mail:	dwright@azpharmacy.gov
Web site:	www.azpharmacy.gov
- 6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The Board staff has seen several instances where a pharmacy just misses the 50 walking feet requirement for toilet facilities upon opening inspection. Usually it is just a few feet, but there have been a few where the distance was 25 or more feet over the requirement. The Board is unable to waive this requirement, because it is not technological or experimental. This has caused pharmacies to spend additional funds to fix the issue, including delays in opening a pharmacy. Since the required distance is a number set by the Board, the staff is requesting an increase in the distance from 50 feet to 100 feet. R4-23-611(A)(4)(b) will be amended to increase the walking distance from 50 feet to 100 feet.

The Board staff gets numerous questions about the equipment requirements, specifically from pharmacies that do not compound, but must purchase a prescription balance, mortar and pestle, and ointment tile that sit unused, collecting dust. A prescription balance can cost up to \$1500. The pharmacies feel this is an unnecessary expense. R4-23-612 (Equipment) could be amended by adding language stating that certain equipment is not required if the pharmacy states in the pharmacy application that compounding will not be performed in the pharmacy. The rulemaking amends

Notices of Final Rulemaking

the requirements for one mortar and pestle, a prescription balance, Class A, and one ointment tile by adding the following language: "not required if the pharmacy states in the application that compounding will not be performed in the pharmacy."

The rule includes format, style, and grammar necessary to comply with the current rules of the Secretary of State and the Governor's Regulatory Review Council.

The Board believes that approval of the rules benefits the public, and pharmacies by establishing standards for pharmacy facilities and equipment.

- 7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency did not review or rely on any study relevant to the rule.

- 8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

- 9. The summary of the economic, small business, and consumer impact:**

The amended rules will impact the Board and pharmacies. The amended rule's impact on the Board will be the usual rulemaking-related costs, which are minimal.

The Board estimates the amended rules will have minimal economic impact on pharmacies. Increasing the distance requirement for the pharmacy toilet facilities will more often save a pharmacy money, by making it easier to comply with the distance requirement. There will be a minimal to moderate economic impact on those pharmacies that do not compound, if they choose not to purchase compounding equipment as allowed by the proposed rule. The savings for those pharmacies could be between \$1500 to \$2500 in one time initial start-up costs of a pharmacy.

The Board believes that approval of the rules benefits the public, and pharmacies by establishing standards for pharmacy facilities and equipment.

- 10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

There are no substantial changes in the final rules from the proposed rules. In the Notice of Proposed Rulemaking, we put the effective date in subsection R4-23-611(A)(4) as October 31, 2013, but time delays in getting the rulemaking to GRRC means the actual effective date will be February 1, 2014, so the October 31, 2013 date was changed to February 1, 2014 in the Notice of Final Rulemaking. The change is not substantial. The Board added the word "permittee" in subsections R4-23-612 (4), (6), and (7) to be consistent with the subject of the Section. There are minor changes to style, format, grammar, and punctuation requested by GRRC staff.

- 11. An agency's summary of the public stakeholder comments made about the rulemaking and the agency response to the comments:**

A public hearing was held July 22, 2013. No one attended the hearing and one written comment in support of the rulemaking was received from Janet Underwood representing the Arizona Community Pharmacy Committee.

- 12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

- a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

The rules do not require a permit.

- b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Federal law does not apply.

- c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

No

- 13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

None

- 14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

No

- 15. The full text of the rules follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Section

R4-23-611. Pharmacy Facilities

R4-23-612. Equipment

R4-23-611. Pharmacy Facilities

A. Facilities. A pharmacy permittee or pharmacist-in-charge shall ensure that:

1. A pharmacy's facilities are constructed according to state and local laws and ordinances;
2. A pharmacy facility's:
 - a. Walls, ceilings, windows, floors, shelves, and equipment are clean and in good repair and order; and
 - b. Counters, shelves, aisles, and open spaces are not cluttered;
3. Adequate trash receptacles are provided and emptied periodically during the day;
4. A pharmacy facility of any pharmacy permit issued or pharmacy remodeled after ~~October 1, 2001~~ February 1, 2014 provides access to toilet facilities either:
 - a. Within the pharmacy area, or
 - b. No further than a walking distance of ~~50~~ 100 feet from the pharmacy area or an alternative distance approved by the Board or its designee;
5. The toilet facilities are maintained in a sanitary condition and in good repair;
6. All professional personnel and staff of the pharmacy keep themselves and their apparel clean while in the pharmacy area;
7. No animals, except licensed assistant animals and guard animals, are allowed in the pharmacy;
8. The pharmacy facility is kept free of insects and rodents; and
9. There is a sink with hot and cold running water, other than a sink in a toilet facility, within the pharmacy area for use in preparing drug products.

B. Supply of drugs and chemicals. A pharmacy permittee or pharmacist-in-charge shall ensure that:

1. A pharmacy maintains a stock of drugs and chemicals that:
 - a. Are sufficient to meet the normal demands of the trading area or patient base the pharmacy serves; and
 - b. Meet all standards of strength and purity as established by the official compendiums;
2. All stock, materials, drugs, and chemicals held for ultimate sale or supply to the consumer are not contaminated;
3. Policies and procedures are developed, implemented, and complied with to prevent the sale or use of a drug or chemical:
 - a. That exceeds its expiration date;
 - b. That is deteriorated or damaged by reason of age, heat, light, cold, moisture, crystallization, chemical reaction, rupture of coating, disintegration, solidification, separation, discoloration, change of odor, precipitation, or other change as determined by organoleptic examination or by other means;
 - c. That is improperly labeled;
 - d. Whose container is defective; or
 - e. That does not comply with federal law; and
4. The policies and procedures described in subsection (B)(3):
 - a. Are made available in the pharmacy for employee reference and inspection by the Board or its designee; and
 - b. Provide the following:
 - i. Any expiration-dated drug or chemical is reviewed regularly;
 - ii. Any drug or chemical that exceeds its expiration date, is deteriorated or damaged, improperly labeled, has a defective container, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
 - iii. Any quarantined drug or chemical is properly destroyed or returned to its source of supply.

R4-23-612. Equipment

A pharmacy permittee or pharmacist-in-charge shall ensure that a pharmacy has the necessary equipment to allow a pharmacist to practice the profession of pharmacy, including the following:

1. Adequate refrigeration equipment dedicated to the storage of drugs and biologicals;
2. A C-V controlled substance register, if C-V controlled substances are sold without an order of a medical practitioner;
3. Graduates in assorted sizes;
4. One mortar and pestle, not required if the pharmacy permittee states in the application that compounding will not be performed in the pharmacy;

Notices of Final Rulemaking

5. Spatulas of assorted sizes including one nonmetallic;
6. Prescription balance, Class A with weights or an electronic balance of equal or greater accuracy, not required if the pharmacy permittee states in the application that compounding will not be performed in the pharmacy;
7. One ointment tile or equivalent, not required if the pharmacy permittee states in the application that compounding will not be performed in the pharmacy
8. A current hard-copy or access to a current electronic-copy of the Arizona Pharmacy Act and administrative rules and Arizona Controlled Substance Act;
9. A professional reference library consisting of a minimum of one current reference or text, in hard-copy or electronic media, addressing the following subject areas:
 - a. Pharmacology or toxicology,
 - b. Therapeutics,
 - c. Drug compatibility, and
 - d. Drug product equivalency;
10. An assortment of labels, including prescription labels, transfer labels for controlled substances, and cautionary and warning labels;
11. A red C stamp as defined in R4-23-110, if C-III, C-IV, and C-V controlled substance invoices are not filed separately from other invoices;
12. Current antidote and drug interaction information; and
13. Regional poison control phone number prominently displayed in the pharmacy area.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG-TERM CARE SYSTEM

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 4188.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 16, 2012.

[R13-216]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable)**
R9-28-702
R9-28-703
- Rulemaking Action:**
Amend
Amend
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. §§ 36-2903.01, 36-2903, 36-2932
Implementing statute: A.R.S. §§ 36-2999.52, 36-2999.54; Arizona Laws 2013, Chapter 37.
- 3. The effective date of the rule:**
February 1, 2014
- 4. Citations to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**
Notice of Final Rulemaking: 19 A.A.R. 137, February 1, 2013
Notice of Rulemaking Docket Opening: 19 A.A.R. 992, May 10, 2013
Notice of Proposed Rulemaking: 19 A.A.R. 983, May 10, 2013
- 5. The agency's contact person who can answer questions about the rulemaking:**
Name: Mariaelena Ugarte
Address: AHCCCS
Office of Administrative Legal Services
701 E. Jefferson St.
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115

Notices of Final Rulemaking

E-mail: AHCCCSrules@azahcccs.gov

Web site: www.azahcccs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

A.R.S. § 36-2999.52 authorizes the Administration to administer a provider assessment on health care items and services provided by nursing facilities and to make supplemental payments to nursing facilities for covered Medicaid expenditures. The Administration is proposing an amendment to rule to describe the process for estimating and distributing supplemental payments to contractors for enhanced payments to eligible nursing facilities based on bed days paid for through managed care. The rule amendments also describe the process for calculating and distributing the enhanced payments to eligible nursing facilities by the Administration for bed days paid by the Administration. In addition, the rules clarify general requirements applicable to nursing facilities in order for them to qualify for the supplemental payments. Finally, the amendment excludes the Arizona Veteran's Homes from the Assessment pursuant to Arizona Laws 2013, Chapter 37, which, pursuant to section 2 of that act is retroactively effective from and after September 30, 2013, and pursuant to section 3 of that act was adopted as an emergency measure and approved by the Governor April 3, 2013.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

A study was not referenced or relied upon when revising the regulations.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

9. A summary of the economic, small business, and consumer impact:

The Administration anticipates no economic impact on the implementing agency, small businesses and consumers. The clarification to rule does not change the estimated impact described under the previous rulemaking made effective January 8, 2013.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

No significant changes were made between the proposed rulemaking and the final rulemaking, other than the addition of the definition of the "820 file" and a concise description of the calculation of the nursing facility assessment, and the due date to provide the assessment information to the Department of Revenue (DOR) was changed from September to December. This change in date has been confirmed with the DOR. In addition, technical and grammatical changes were made as a result of the Governors Regulatory Review Council's review, such as clarification of the verbiage under R9-28-703(A)(1) and (A)(2). In addition under R9-28-702, sections (D)(7), (D)(8) and (D)(9) are new text and should have been underlined.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

Comment received from Kathleen Pagels, May 15, 2013. No other comments were received as of the close of the comment period of June 18, 2013.

Notices of Final Rulemaking

Item #	Rule Cite Line #	Comment From	Comment	Analysis/Recommendation
1.	R9-28-702 D4	Kathleen Pagel	If they change the number of days for those paying a lower rate, it will require a new waiver. The way it is structured, if they cannot adjust the \$7.50 rate, any change in the lower tax rate for high MA days providers or any change in the MA patient day threshold will require a new waiver. A new waiver is not required when either the tax rate is increased (or decreased) equally or by the same percentage for all providers. I suggest the language indicate that the tax rates in D2 and D3 and/or the number of annual Medicaid days used in subsection (D)(3) will be modified each August 1, to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2). This language would at least provides a possible opportunity to modify the model for updated days without having to obtain a new waiver.	The Administration will not make any changes based on this comment. Any change in the tax rate for one or both classes of facilities (high and low Medicaid utilization) or any change in the number of bed days that will distinguish the classes of facilities will require review and approval by the federal government. As such, the proposed modification will not achieve the stated purpose (avoiding potential future review by the federal government) and reduces the transparency and clarity of the rule because it will not include the actual tax rates. If modified as proposed, the rule would merely reflect the method for calculating the rate rather than the actual rates. In addition, the suggested method of calculation could result in multiple outcomes that satisfy the test; therefore, the rule would not reflect the Administration's determination of the actual future rate.
2.	R9-28-703	Kathleen Pagel	<p>A. On an annual basis, AHCCCS shall determine the total funds available in the nursing facility assessment fund available for supplemental payments by:</p> <p>3. Multiplying the appropriate federal matching assistance percentage (FMAP) by the difference of subsections (A)(1) and (A)(2).</p> <p><u>A 3 Change this to read: dividing the result of (A)(1) and (A)(2) by one minus the appropriate federal matching assistance percentage (FMAP)</u></p> <p>A. Payment by AHCCCS Contractors.</p> <p>1. Before each payment year, AHCCCS the Administration shall estimate the Net Nursing Facility Assessment Fund by:</p> <p>a. Estimating the nursing facility assessments to be collected in the upcoming assessment year,</p> <p>b. Subtracting one percent of the total estimated assessments, and</p> <p>c. Multiplying the result of (A)(1)(a) and (A)(1)(b) by the appropriate federal matching assistance percentage (FMAP).</p> <p><u>1.C Change this to read: dividing the result of (A)(1)(a) and (A)(1)(b) by one minus the appropriate federal matching assistance percentage (FMAP)</u></p>	The Administration agrees to make changes to the formula to accurate reflect the total of the amounts collected by the assessment after the addition of federal financial participation.

Notices of Final Rulemaking

3.	R9-28-702	Kathleen Pagel	<p>C. All nursing facilities licensed in the state of Arizona shall be subject to the provider assessment except for:</p> <ol style="list-style-type: none"> 1. A continuing care retirement community, 2. A facility with 58 or fewer beds, 3. A facility designated by the Arizona Department of Health Services as an Intermediate Care Facility for the Mentally Retarded, or 4. A tribally owned or operated facility located on a reservation. (State Veterans Homes?) <p>D. The Administration shall calculate the prospective nursing facility provider assessment for qualifying nursing facilities as follows:</p> <ol style="list-style-type: none"> 1. AHCCCS The Administration shall utilize each nursing facility's Universal Accounting Report (UAR) submitted to the Arizona Department of Health Services as of August 1st immediately preceding the assessment year. In addition, by August 1st each year, each nursing facility shall provide AHCCCS the Administration with any additional information necessary to determine the assessment. For any nursing facility that does not provide by August 1st the additional information requested by AHCCCS the Administration, AHCCCS the Administration shall determine the assessment based on the information available. 4. The number of annual Medicaid days used in subsection (D)(3) shall be recalculated each August 1, to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2). (if they change the number of days for those paying a lower rate, it will require a new waiver). The way it is structured, if they cannot adjust the \$7.50 rate, any change in the lower tax rate for high MA days providers or any change in the MA patient day threshold will require a new waiver. A new waiver is not required when either the tax rate is increased (or decreased) equally or by the same percentage for all providers. I suggest the language indicate that the rates in D2 and D3 and/or the number of annual Medicaid days used in subsection (D)(3) will be modified each August 1, to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2). <p>This language would at least provide a possible opportunity to modify the model for updated days without having to obtain a new waiver.</p> <p>B. Each contractor must pay each facility the amount computed within 20 calendar days of receiving the nursing facility enhanced payment from the Administration. The contractors must confirm each payment and payment date to the Admin (All timeframes should be 20 days)</p>	<p>The Administration agrees with the change of Universal to Uniform in the UAR reference.</p> <p>The Administration has amended the rule to exclude the Arizona Veterans' Homes from the assessment and the supplemental payment pursuant to Arizona Laws 2013, Chapter 37 which excludes the Arizona Veterans' Homes from the definition of a nursing facility for purposes of Title 36, Chapter 29, Article 6 of the Arizona Revised Statutes.</p> <p>The Administration agrees that all timeframes should be 20 days, changes made accordingly.</p>
----	-----------	----------------	--	---

Notices of Final Rulemaking

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters are applicable.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

The rule must conform to the requirements of 42 U.S.C. § 1396b(w) and the implementing federal regulations found at 42 C.F.R. Part 433, Subpart B. An assessment or supplemental payments that do not meet federal requirements would result in a reduction in federal financial participation in the Medicaid program administered in Arizona. As indicated in the statute, federal approval for the assessment and the supplemental payments is required. As such, the rule will not exceed the parameters of federal law.”

c. Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG-TERM CARE SYSTEM**

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

R9-28-702. Nursing Facility Assessment

R9-28-703. Nursing Facility Supplemental Payments

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-702. Nursing Facility Assessment

A. For purposes of this Section, in addition to the definitions under A.R.S. 36-2999.51, the following terms have the following meaning unless the context specifically requires another meaning:

“820 transaction” means the standard health care premium payments transaction required by 45 CFR 162.1702.

“Assessment year” means the 12 month period beginning October 1st each year

“Nursing Facility Assessment” means a tax paid by a qualifying nursing facility to the Department of Revenue on a quarterly basis established under A.R.S. § 36-2999.52.

“Medicaid days” means days of nursing facility services paid for by the Administration or its contractors as the primary payor and as reported in AHCCCS’ claim and encounter data.

“Medicare days” means resident days where the Medicare program, a Medicare advantage or special needs plan, or the Medicare hospice program is the primary payor.

“Payment year” means the 12 month period beginning October 1st each year.

B. No Change

C. All nursing facilities licensed in the state of Arizona shall be subject to the provider assessment except for:

1. A continuing care retirement community,

2. A facility with 58 or fewer beds,

3. A facility designated by the Arizona Department of Health Services as an Intermediate Care Facility for the Mentally Retarded, ~~or~~

Notices of Final Rulemaking

4. A tribally owned or operated facility located on a reservation, or
 5. Arizona Veteran's Homes
- D.** The Administration shall calculate the prospective nursing facility provider assessment for qualifying nursing facilities as follows:
1. ~~AHCCCS~~ The Administration shall utilize each nursing facility's ~~Universal Uniform~~ Accounting Report (UAR) submitted to the Arizona Department of Health Services as of August 1st immediately preceding the assessment year. In addition, by August 1st each year, each nursing facility shall provide ~~AHCCCS the Administration~~ with any additional information necessary to determine the assessment. For any nursing facility that does not provide by August 1st the additional information requested by ~~AHCCCS the Administration~~, ~~AHCCCS the Administration~~ shall determine the assessment based on the information available.
 2. No Change
 3. No Change
 4. No Change
 5. No Change
 6. ~~AHCCCS~~ The Administration will forward the provider assessment by facility to the Department of Revenue by ~~September 1st no later than December~~ preceding the assessment year.
 7. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be responsible for the portion of the assessment applied to the dates the nursing facility is not operating.
 8. In the event a nursing facility begins operation during the assessment year, that facility would have no responsibility for the assessment until such time as the facility has UAR data that falls within the collection period for the assessment calculation.
 9. In the event a nursing facility has a change of ownership such that the facility remains open and the ownership of the facility changes, the assessment liability transfers with the change in ownership.

R9-28-703. Nursing Facility Supplemental Payments

- ~~**A.** On an annual basis, AHCCCS shall determine the total funds available in the nursing facility assessment fund available for supplemental payments by:-~~
- ~~1. Estimating the nursing facility assessments to be collected in the upcoming assessment year;~~
 - ~~2. Subtracting one percent of the total estimated assessments, and~~
 - ~~3. Multiplying the appropriate federal matching assistance percentage (FMAP) by the difference of subsections (A)(1) and (A)(2)-~~
- ~~**B.** AHCCCS shall calculate each year's quarterly supplemental payments to each nursing facility with Medicaid utilization, excluding ICFMRs, by:-~~
- ~~1. Determining each facility's proportion of Medicaid resident bed days to total nursing facility Medicaid resident bed days by utilizing adjudicated claims and encounter data for the most recent 12 month period, including appropriate claims lag-~~
 - ~~2. Multiplying subsections (B)(1) and (A)(3)-~~
 - ~~3. Dividing the payments determined under subsection (B)(2) by four-~~
- ~~**C.** AHCCCS and its contractors shall make quarterly supplemental payments to nursing facility providers-~~
- ~~**D.** Following the end of each assessment year, AHCCCS shall reconcile the supplemental nursing facility payments made during the assessment year to the annual deposits to the nursing facility assessment fund for the same year less one percent of the actual assessments deposited in the fund plus federal matching funds. The proportion of each nursing facility's Medicaid resident bed days shall be used to calculate the reconciliation amounts. AHCCCS and its contractors shall make additional payments to or recoupments from nursing facilities based on the reconciliation-~~
- ~~**E.** Aggregate supplemental payments to nursing facilities shall not exceed upper payment limits established under 42 CFR 447.272-~~
- ~~**F.** A facility must be open on the date the supplemental payment is made in order to receive a payment-~~
- A.** Nursing Facility Supplemental Payments
1. Using Medicaid resident bed day information from the most recent and complete twelve months of adjudicated claims and encounter data, for every combination of contractor and every facility eligible for a supplemental payment, the Administration shall determine annually a ratio equal to the number of bed days for the facility paid by each contractor divided by the total number of bed days paid to all facilities by all contractors and the Administration.
 2. Using the same information as used in (A)(1), for every facility eligible for a supplemental payment, the Administration shall determine annually a ratio equal to the number of bed days for the facility paid by the Administration divided by the total number of bed days paid to all facilities by all contractors and the Administration.
 3. Quarterly, each contractor shall make payments to each facility in an amount equal to 98% of the amounts identified as Nursing Facility Enhanced Payments in the 820 transaction sent from AHCCCS to the contractor for the quarter multiplied by the percentage determined in subsection (A)(2) applicable to the contractor and to each facility.
 4. Quarterly, the Administration shall make payments to each facility in an amount equal to 99% of the amounts collected during the preceding quarter under R9-28-702, less amounts collected and used to fund the Nursing Facility

- December 20, 2013

Notices of Final Rulemaking

- a. **If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Pursuant to A.R.S. § 41-1032(A)(4), the rules become effective on December 3, 2013. A.R.S. § 41-1032(A)(4) provides that a rule may be effective immediately if the rule provides a benefit to the public and a penalty is not associated with a violation of the rule. The amended rule and new rules provide a benefit to the public by allowing irrigation grandfathered right (IGRF) holders a delay in the reduction of the allocation factor used to calculate extinguishment credits in the Pinal Active Management Area (AMA) until September 15, 2014. This temporary delay is designed to allow IGRF holders in the Pinal AMA time to explore alternatives for meeting the Pinal AMA's management goal and make recommendations to the Arizona Department of Water Resources (Department). Additionally, no penalty is associated with a violation of the rule.

4. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 19 A.A.R. 2795, September 6, 2013

Notice of Proposed Rulemaking: 19 A.A.R. 2786, September 6, 2013

5. **Agency contacts who can answer questions about the rulemaking:**

Name: Jeff Tannler
Statewide Active Management Area Director

Address: Department of Water Resources
3550 N. Central Ave.
Phoenix, AZ 85012

Telephone: (602) 771-8424

Fax: (602) 771-8686

E-mail: jmtannler@azwater.gov

Name: Ayesha Vohra
Deputy Counsel

Address: Department of Water Resources
3550 N. Central Ave.
Phoenix, AZ 85012

Telephone: (602) 771-8472

Fax: (602) 771-8686

E-mail: avohra@azwater.gov

6. **An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

Reasons for Initiating the Rulemaking

Developers of new subdivisions within an Active Management Area ("AMA") must obtain a determination of assured water supply ("AWS") from the Department prior to the sale of any lots. A.R.S. § 45-576(A). One of several requirements to obtain a determination of assured water supply is to demonstrate that any groundwater use is consistent with the management goal of the AMA. The management goal of the Pinal AMA, where a predominately agricultural economy exists, is to allow development of non-irrigation uses and to preserve existing agricultural economies for as long as feasible, consistent with the necessity to preserve future water supplies for non-irrigation uses. A.R.S. § 45-562(B).

One method of demonstrating that all or a portion of the groundwater use is consistent with the management goal of the AMA is through a mechanism for the extinguishment of grandfathered groundwater rights. Under the Department's AWS Rules, when a grandfathered groundwater right is extinguished, the Department issues credits that can be used to pump a specified volume of groundwater consistent with the management goal. An applicant for an AWS determination that acquires extinguishment credits can pledge those credits to demonstrate that all or apportion of the applicant's projected groundwater use is consistent with the AMA's management goal.

Prior to 2007, the amount of credits issued for the extinguishment of grandfathered groundwater rights in the Pinal AMA remained the same each year, regardless of when the extinguishment occurred. In 2007, the Department amended the rule governing the calculation of extinguishment credits in the Pinal AMA, R12-15-725, to provide for a gradual reduction in the amount of credits given for the extinguishment of grandfathered groundwater rights based on when the extinguishment occurs. Under the rule as amended in 2007, the first reduction in the allocation factor for

Notices of Final Rulemaking

calculating extinguishment credits was to take effect on January 1, 2010, with gradual increases in the reduction each year thereafter until 2054, when no credits would be given for the extinguishment of a grandfathered right.

One of the major reasons for the 2007 amendment was that residential development in the Pinal AMA was increasing rapidly, and the rate of development was projected to continue for the foreseeable future. Some of this development was anticipated to result in the extinguishment of IGFRs for extinguishment credits. Extinguishment of IGFRs under the extinguishment credit rule in effect at that time, combined with rapid development, would lead to over-allocation of unreplenished groundwater supplies. The 2007 amendment was designed to preserve sufficient groundwater supplies to meet the demands of agricultural irrigation, approved assured water supply determinations, possible future assured water supply determinations, and industrial uses, consistent with the Pinal AMA's management goal.

Shortly after the 2007 rule amendment, the Arizona real estate market began experiencing a significant downturn, and residential development in the Pinal AMA slowed dramatically. In 2009, landowners and irrigation districts in the Pinal AMA expressed concerns to the Department that implementation of the reduction in extinguishment credits as scheduled could result in owners of farm land in the AMA prematurely extinguishing their IGFRs before the first reduction in credits was to take effect on January 1, 2010. It was feared that this would exacerbate the effects of the economic recession in the area by taking more lands out of agricultural production and increasing the water and power costs for those lands that continued to be farmed.

Consistent with the Pinal AMA management goal of preserving the agricultural economy for as long as feasible while ensuring water supply availability for future municipal and industrial water uses, the Department amended rule R12-15-725 in 2009 to delay the effective date of the first reduction of the allocation factor for calculating extinguishment credits in the Pinal AMA until 2014. It was felt that by 2014, economic conditions in the AMA would improve sufficiently so that implementation of the reduction in extinguishment credits at that time would not have a significant negative impact on the local economy. Through the 2009 amendment, the allocation factors for calendar years 2010 through 2013 were increased to 100, and the allocation factors for calendar years 2014 through 2016 were increased to 94, 88 and 82, respectively. No changes were made to the allocation factors for calendar years 2017 and thereafter.

Earlier this year, a number of landowners in the Pinal AMA requested the Department to again delay the reduction in the allocation factors used to calculate extinguishment credits in the Pinal AMA because economic conditions in the area have not improved as much as expected when rule R12-15-725 was amended in 2009. After considering this request, the Department has determined that it is appropriate to adopt a rule temporarily delaying by five years each annual reduction in the allocation factor. The new rule will automatically repeal effective September 15, 2014, at which time the current reduction schedule will become effective again. This temporary nine and a half month delay in the reduction schedule will allow water users and other interested parties in the Pinal AMA to work together to examine conditions within the AMA and offer alternatives for meeting the Pinal AMA's management goal, which could include making the 5-year delay permanent or another alternative solution through another rulemaking proceeding.

Explanation of the Rules

Rule R12-15-725 is amended by deleting subsection (B), which contained the methodology for calculating extinguishment credits in the Pinal AMA. Two new rules are adopted governing the calculation of extinguishment credits in the Pinal AMA: R12-15-725.01 and R12-15-725.02. R12-15-725.01(A) contains the same language that previously was in rule R12-15-725(B), except that the table of allocation factors has been changed to delay each annual reduction in the allocation factor by five years. Consequently, the first year in which there is a reduction in the allocation factor is 2019, rather than in 2014, and the last year in which there is an allocation factor is 2059, rather than 2054. R12-15-725.01(B) provides that the section is automatically repealed effective September 15, 2014.

R12-15-725.02 contains the methodology for calculating extinguishment credits in the Pinal AMA beginning on September 15, 2014. The language in R12-15-725.02 is the same as the language previously in R12-15-725(B), except that the table of allocation factors has been changed by delaying the first reduction in the allocation factor until September 15, 2014. Beginning September 15, 2014, the allocation factors in R12-15-725.02 are identical to the allocation factors that were in R12-15-725(B).

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

9. A summary of the economic, small business, and consumer impact:

The rule amendment will have potential positive short-term economic impacts on IGFR holders who would have prematurely extinguished their IGFRs under the existing rule, but will retain their IGFRs and continue farming under the rule amendment. These IGFR holders may benefit in the following ways: 1) by maintaining the lower tax rates applicable to agricultural land uses and 2) from an increased volume of extinguishment credits if they decide to extinguish between January 1, 2014 and September 15, 2014. The rule amendment will likely have positive economic impacts

Notices of Final Rulemaking

on businesses within the Pinal AMA that sell farming materials, such as seed and equipment. Lastly, the rule changes may have a positive short-term economic impact on land developers and new homeowners within the Pinal AMA.

The rule amendment may have a negative short-term economic impact on governmental entities that receive tax revenues from the real estate taxes assessed on lands within the Pinal AMA, such as Pinal County and Maricopa County. Some lands within the AMA that otherwise would have been taken out of agricultural production may remain in agricultural production during the January 1, 2014 to September 15, 2014 delay period. These lands would retain their lower agricultural tax status during that period. However, the loss in real estate tax revenue may be offset by more revenues from other taxes paid by the persons farming the lands, such as income taxes and sales taxes.

The rule amendment will likely result in more unreplenished groundwater withdrawals within the Pinal AMA, as some IGFR holders will likely continue irrigating their lands with groundwater during the period from January 1, 2014 to September 15, 2014. Additionally, some IGFR holders will receive more extinguishment credits during that period than they would receive without the rule amendment. These additional unreplenished groundwater withdrawals could have a slight negative economic impact on groundwater users and landowners within the general areas of the withdrawals by reducing the physical availability of groundwater supplies in those areas. The economic impact is not possible to quantify because it depends on factors such as the current groundwater levels and rates of urbanization in the areas of the withdrawals. However, the Department believes there will be no significant negative economic impact.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

There are no changes between the proposed rules and the final rules.

11. A summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

Comment from Casa Grande City Council Member Dick Powell: The proposed rulemaking provides a good opportunity to explore the wisdom of the extinguishment process.

Response: The Department appreciates the support.

Comment from Casa Grande City Council Member Dick Powell: Casa Grande passed a resolution opposing any type of extinguishment process because of the economic damage it would do to the agricultural economy of Casa Grande, Eloy, Coolidge, Florence, Maricopa, and all of Central Arizona. If farming is forced out by the extinguishment process, Casa Grande could experience an over 40% impact to their economy. Extinguishments will be devastating to the agribusiness economy.

Response: Although the Department generally agrees that the premature extinguishment of a large number of IGFRs could have a negative impact on the local economy, it does not believe that a reduction of extinguishment credits under the schedule included in the proposed rules will cause Casa Grande to experience an “over 40% impact” to their economy,” or that it will be “devastating to the agribusiness economy.” Recent economic conditions and historical development patterns do not support this conclusion.

Comment from Casa Grande City Council Member Dick Powell: The first part of the Pinal AMA goal is to keep the agricultural economy going as long as possible and extinguishments are not consistent with that. I spoke recently with a former Pinal Groundwater Users Advisory Council member who said the goal was to get farmers out of the way in order for development to take place.

Response: The statutory management goal of the Pinal AMA is to allow development of non-irrigation uses and to preserve existing agricultural economies in the AMA for as long as feasible, consistent with the necessity to preserve future water supplies for non-irrigation uses. This rulemaking is designed to preserve the existing agricultural economy while preserving future water supplies for non-irrigation uses. Under the current rule (R12-15-725) as well as the R12-15-725.01 and R12-15-725.02, IGFR holders are not required to extinguish their rights. The Department’s policy is not to discourage or displace farming in the Pinal AMA.

Comment from Casa Grande City Council Member Dick Powell: The temporary stay lets us look at other concerns. The letter from Representatives Shope and Pratt said they wanted to give the group of local stakeholders time to work on a solution. The letter says the Department will open another rulemaking process in the Spring. The temporary delay will allow stakeholders to work together.

Response: The Department appreciates the support. The Department understands that currently an advisory committee is being established to meet and provide recommendations for meeting the Pinal AMA’s management goal.

Comment from Casa Grande City Council Member Dick Powell: The rulemaking process takes six months, so a final recommendation would have to go into place in February. This is a very short turn around given the upcoming holiday season. I would like assurance in writing that a new rule or back-up process would be in place before September.

Response: In order for a new rule to take effect prior to the September 15, 2014 effective date of proposed rule R12-15-725.02, a rulemaking proceeding would need to be initiated in early March, 2014. The Department believes this is sufficient time for the advisory committee to provide recommendations to the Department on any alternative pro-

Notices of Final Rulemaking

posals. It would be inappropriate for the Department to provide assurance that a new rule or back-up process will be in place before September 15, 2014 prior to receiving and considering the advisory committee's recommendations.

Comment from Tiffany Shedd: I support the nine month extension but am concerned that the committee has not yet been formed and the process may take longer than the 9-month delay. The issue requires not just looking at extinguishment credits but also new solutions to address the AMA goal. I would hope that the Department would consider an extension, as such an important issue takes more than one or two meetings.

Response: In order for a new rule to take effect prior to the September 15, 2014 effective date of proposed rule R12-15-725.02, a rulemaking proceeding would need to be initiated in early March, 2014. The Department believes this is sufficient time for the advisory committee and any other interested parties to provide alternate recommendations to the Department.

Comment from Rodney Shedd: I support an amendment of the Pinal Active Management Area Assured Water Supply rules to temporarily delay reduction in extinguishment credits.

Response: The Department appreciates the support.

Comment from Rodney Shedd: The same market conditions exist today as they did back in 2009 when the last amendment was proposed. Residential development has significantly decreased since the pre-2007 housing boom upon which the 2007 rulemaking was based. A delay will allow groundwater users within the AMA to reexamine the current conditions within the AMA and offer other alternatives.

Response: The Department appreciates the support.

Comment from Arnold Burrue: I am relieved at the Department's decision to potentially extend the extinguishment rights ruling. This along with the potential for a new steering committee is a great step towards bringing the agricultural community and DWR into a working relationship.

Response: The Department appreciates the support.

12. Any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules do not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law is not applicable to the subject of the rules because the rules are based on state law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact on the competitiveness of business in this state to the impact on business in another state:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

None

14. Was this rule previously made, amended, or repealed as an emergency rule?

No

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

Section

R12-15-725. Pinal AMA – Groundwater Allowance and Extinguishment Credits Calculation

R12-15-725.01. Pinal AMA – Extinguishment Credits Calculation; Automatic Repeal

R12-15-725.02. Pinal AMA – Extinguishment Credits Calculation Effective September 15, 2014

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

R12-15-725. Pinal AMA – Groundwater Allowance and Extinguishment Credits Calculation

A. The Director shall calculate the groundwater allowance for a certificate or designation in the Pinal AMA as follows:

1. No change
2. No change
 - a. No change

Notices of Final Rulemaking

- i. No change
- ii. No change
- iii. No change
- iv. No change
- v. No change
- b. No change
- c. No change
- d. No change
- 3. No change

B. ~~The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:~~

- 1. ~~For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the applicable allocation factor as determined under subsection (B)(3) or (B)(4) of this Section.~~
- 2. ~~For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, an amount calculated by multiplying 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply that product by the applicable allocation factor as determined under subsection (B)(3) or (B)(4) of this Section, except that:~~
 - a. ~~If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and~~
 - b. ~~If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment credits.~~
- 3. ~~Except as provided in subsection (B)(4) of this Section, in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (B)(1) or (B)(2) of this Section, the Director shall use the allocation factor associated with the year in which the grandfathered right is extinguished, as shown in the table below.~~

Year	Allocation Factor
2010	100
2011	100
2012	100
2013	100
2014	94
2015	88
2016	82
2017	76
2018	74
2019	72
2020	70
2021	68
2022	66
2023	64
2024	62
2025	60
2026	58
2027	56
2028	54
2029	52
2030	50
2031	48
2032	46

Notices of Final Rulemaking

2033	44-
2034	42-
2035	40-
2036	38-
2037	36-
2038	34-
2039	32-
2040	30-
2041	28-
2042	26-
2043	24-
2044	22-
2045	20-
2046	18-
2047	16-
2048	14-
2049	12-
2050	10-
2051	8-
2052	6-
2053	4-
2054	2-
After 2054	0-

4. If, before January 1, 2055, there is a moratorium on adding new member lands and member service areas in the Pinal AMA pursuant to A.R.S. § 45-576.06(A), in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (B)(1) or (B)(2) of this Section, the Director shall use an allocation factor determined as follows:
- a. If the grandfathered right is extinguished while the moratorium is in effect, the Director shall use the allocation factor associated with the year in which the moratorium first became effective, as shown in the table in subsection (B)(3) of this Section.
 - b. If the grandfathered right is extinguished when the moratorium is no longer in effect, the Director shall use the allocation factor associated with the year determined pursuant to this subsection, as shown in the table in subsection (B)(3) of this Section. The Director shall determine the year as follows:
 - i. Subtract the year in which the moratorium first became effective from the year in which the moratorium ended.
 - ii. Subtract the difference in subsection (B)(4)(b)(i) of this Section from the year in which the grandfathered right was extinguished.

R12-15-725.01. Pinal AMA – Extinguishment Credits Calculation; Automatic Repeal

- A.** The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:
1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the applicable allocation factor as determined under subsection (A)(3) or (A)(4) of this Section.
 2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, an amount calculated by multiplying 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply that product by the applicable allocation factor as determined under subsection (A)(3) or (A)(4) of this Section, except that:
 - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
 - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the

Notices of Final Rulemaking

extinguishment credits.

3. Except as provided in subsection (A)(4) of this Section, in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (A)(1) or (A)(2) of this Section, the Director shall use the allocation factor associated with the year in which the grandfathered right is extinguished, as shown in the table below.

<u>Year</u>	<u>Allocation Factor</u>
<u>2010</u>	<u>100</u>
<u>2011</u>	<u>100</u>
<u>2012</u>	<u>100</u>
<u>2013</u>	<u>100</u>
<u>2014</u>	<u>100</u>
<u>2015</u>	<u>100</u>
<u>2016</u>	<u>100</u>
<u>2017</u>	<u>100</u>
<u>2018</u>	<u>100</u>
<u>2019</u>	<u>94</u>
<u>2020</u>	<u>88</u>
<u>2021</u>	<u>82</u>
<u>2022</u>	<u>76</u>
<u>2023</u>	<u>74</u>
<u>2024</u>	<u>72</u>
<u>2025</u>	<u>70</u>
<u>2026</u>	<u>68</u>
<u>2027</u>	<u>66</u>
<u>2028</u>	<u>64</u>
<u>2029</u>	<u>62</u>
<u>2030</u>	<u>60</u>
<u>2031</u>	<u>58</u>
<u>2032</u>	<u>56</u>
<u>2033</u>	<u>54</u>
<u>2034</u>	<u>52</u>
<u>2035</u>	<u>50</u>
<u>2036</u>	<u>48</u>
<u>2037</u>	<u>46</u>
<u>2038</u>	<u>44</u>
<u>2039</u>	<u>42</u>
<u>2040</u>	<u>40</u>

Notices of Final Rulemaking

<u>2041</u>	<u>38</u>
<u>2042</u>	<u>36</u>
<u>2043</u>	<u>34</u>
<u>2044</u>	<u>32</u>
<u>2045</u>	<u>30</u>
<u>2046</u>	<u>28</u>
<u>2047</u>	<u>26</u>
<u>2048</u>	<u>24</u>
<u>2049</u>	<u>22</u>
<u>2050</u>	<u>20</u>
<u>2051</u>	<u>18</u>
<u>2052</u>	<u>16</u>
<u>2053</u>	<u>14</u>
<u>2054</u>	<u>12</u>
<u>2055</u>	<u>10</u>
<u>2056</u>	<u>8</u>
<u>2057</u>	<u>6</u>
<u>2058</u>	<u>4</u>
<u>2059</u>	<u>2</u>
<u>After 2059</u>	<u>0</u>

4. If, before January 1, 2060, there is a moratorium on adding new member lands and member service areas in the Pinal AMA pursuant to A.R.S. § 45-576.06(A), in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (A)(1) or (A)(2) of this Section, the Director shall use an allocation factor determined as follows:

- a. If the grandfathered right is extinguished while the moratorium is in effect, the Director shall use the allocation factor associated with the year in which the moratorium first became effective, as shown in the table in subsection (A)(3) of this Section.
- b. If the grandfathered right is extinguished when the moratorium is no longer in effect, the Director shall use the allocation factor associated with the year determined pursuant to this subsection, as shown in the table in subsection (A)(3) of this Section. The Director shall determine the year as follows:
 - i. Subtract the year in which the moratorium first became effective from the year in which the moratorium ended.
 - ii. Subtract the difference in subsection (A)(4)(b)(i) of this Section from the year in which the grandfathered right was extinguished.

B. This section shall repeal automatically effective September 15, 2014.

R12-15-725.02. Pinal AMA – Extinguishment Credits Calculation Effective September 15, 2014

Beginning September 15, 2014, the Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:

1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the applicable allocation factor as determined under subsection (3) or (4) of this Section.
2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, an amount calculated by multiplying 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply that product by the applicable allocation factor as determined under subsection (3) or (4) of this Section, except that:

Notices of Final Rulemaking

- a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
- b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment credits.
3. Except as provided in subsection (4) of this Section, in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (1) or (2) of this Section, the Director shall use the allocation factor associated with the year or portion of a year in which the grandfathered right is extinguished, as shown in the table below.

<u>Year</u>	<u>Allocation Factor</u>
<u>2010</u>	<u>100</u>
<u>2011</u>	<u>100</u>
<u>2012</u>	<u>100</u>
<u>2013</u>	<u>100</u>
<u>January 1, 2014 through September 14, 2014</u>	<u>100</u>
<u>September 15, 2014 through December 31, 2014</u>	<u>94</u>
<u>2015</u>	<u>88</u>
<u>2016</u>	<u>82</u>
<u>2017</u>	<u>76</u>
<u>2018</u>	<u>74</u>
<u>2019</u>	<u>72</u>
<u>2020</u>	<u>70</u>
<u>2021</u>	<u>68</u>
<u>2022</u>	<u>66</u>
<u>2023</u>	<u>64</u>
<u>2024</u>	<u>62</u>
<u>2025</u>	<u>60</u>
<u>2026</u>	<u>58</u>
<u>2027</u>	<u>56</u>
<u>2028</u>	<u>54</u>
<u>2029</u>	<u>52</u>
<u>2030</u>	<u>50</u>
<u>2031</u>	<u>48</u>
<u>2032</u>	<u>46</u>
<u>2033</u>	<u>44</u>
<u>2034</u>	<u>42</u>
<u>2035</u>	<u>40</u>
<u>2036</u>	<u>38</u>

Notices of Final Rulemaking

<u>2037</u>	<u>36</u>
<u>2038</u>	<u>34</u>
<u>2039</u>	<u>32</u>
<u>2040</u>	<u>30</u>
<u>2041</u>	<u>28</u>
<u>2042</u>	<u>26</u>
<u>2043</u>	<u>24</u>
<u>2044</u>	<u>22</u>
<u>2045</u>	<u>20</u>
<u>2046</u>	<u>18</u>
<u>2047</u>	<u>16</u>
<u>2048</u>	<u>14</u>
<u>2049</u>	<u>12</u>
<u>2050</u>	<u>10</u>
<u>2051</u>	<u>8</u>
<u>2052</u>	<u>6</u>
<u>2053</u>	<u>4</u>
<u>2054</u>	<u>2</u>
<u>After 2054</u>	<u>0</u>

4. If, before January 1, 2055, there is a moratorium on adding new member lands and member service areas in the Pinal AMA pursuant to A.R.S. § 45-576.06(A), in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (1) or (2) of this Section, the Director shall use an allocation factor determined as follows:
 - a. If the grandfathered right is extinguished while the moratorium is in effect, the Director shall use the allocation factor associated with the year in which the moratorium first became effective, as shown in the table in subsection (3) of this Section.
 - b. If the grandfathered right is extinguished when the moratorium is no longer in effect, the Director shall use the allocation factor associated with the year determined pursuant to this subsection, as shown in the table in subsection (3) of this Section. The Director shall determine the year as follows:
 - i. Subtract the year in which the moratorium first became effective from the year in which the moratorium ended.
 - ii. Subtract the difference in subsection (4)(b)(i) of this Section from the year in which the grandfathered right was extinguished.